

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1987

FRESNO POLICE OFFICERS
ASSOCIATION, et al.,

Petitioner,

vs.

STATE OF CALIFORNIA, et al.,

Respondents.

REPLY BRIEF OF PETITIONER

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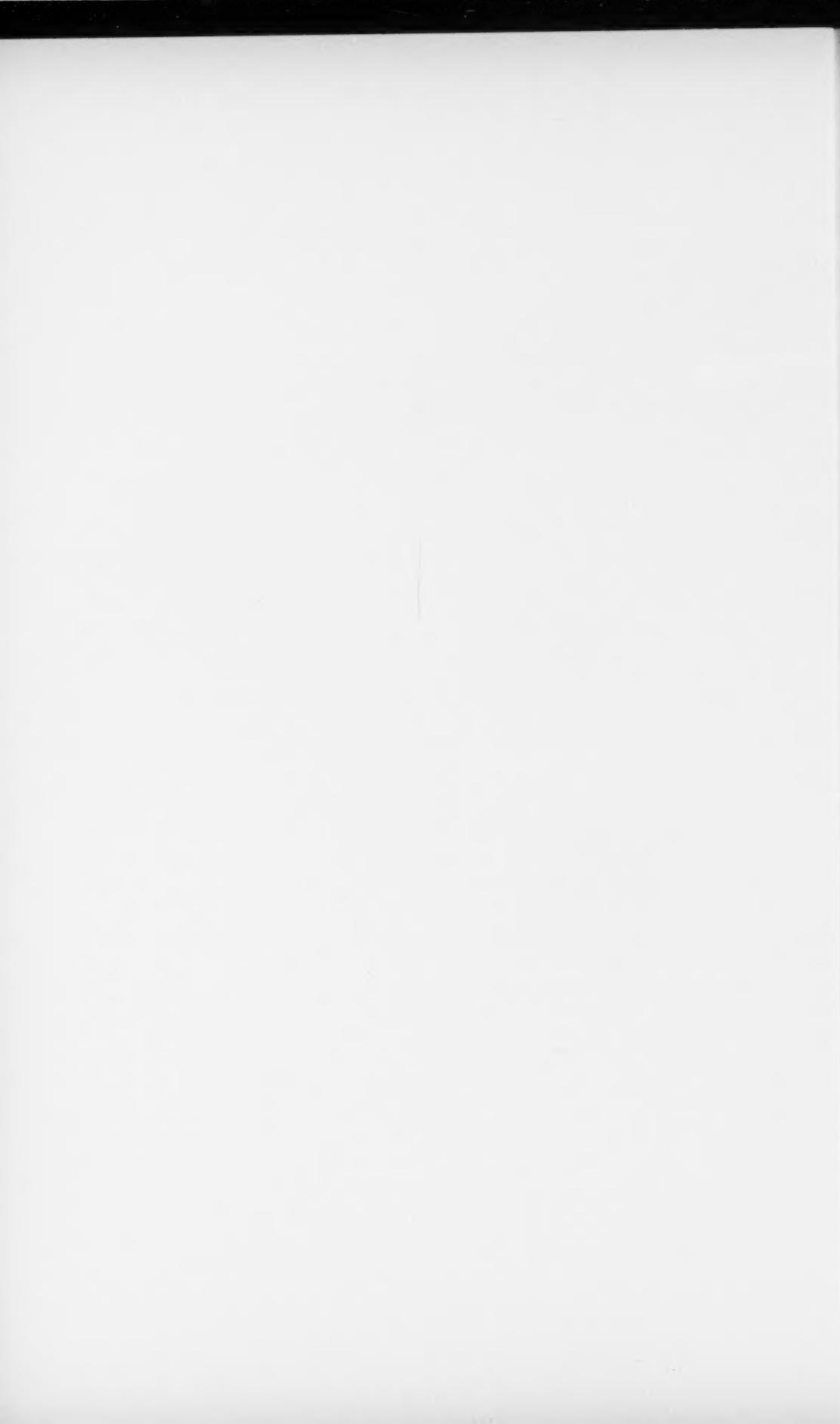


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REPLY BRIEF OF PETITIONER

Although the reasons which we believe warrant the grant of a writ are adequately stated in the Petition, we believe a brief reply is warranted to correct and to comment on several of the factual assertions and legal contentions in STATE's Brief in Opposition to Certiorari.

1. The Liability of STATE for Interest was not Decided in Sonoma County.

STATE argues that the instant Petition is an attempt to circumvent the

decision of the California Supreme Court in Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296. (Br. in Opp. 10). In making this argument, STATE asserts that the California Supreme Court held in Sonoma County, as a matter of law, that interest was not available. (Br. in Opp. 8).

The liability of the STATE for interest was not at issue and not resolved in Sonoma County. The California Supreme Court held that interest was not recoverable against the local public agency employers; the California Supreme Court did not hold that public employees were barred from recovering interest from the STATE. Id. at 321.

Sonoma County involved actions between various public employee organizations and their public agency



employers. The STATE was identified as a real party in interest by the Court. Id. at 303.

The employee organizations requested interest on the wages withheld from their local public agency employers as a result of the holding by the Court that Government Code §16280 and 16280.5 constituted an unconstitutional impairment of contract and a violation of the home rule provisions of the California Constitution. Sonoma County held only that the local public agency employers were not required to pay prejudgment interest. In so holding, the Court in Sonoma County stated as follows:

"Petitioners also seek interest from July 1, 1978, on the wages withheld. Prejudgment interest is not allowed if the debtor 'is prevented by law... from paying the

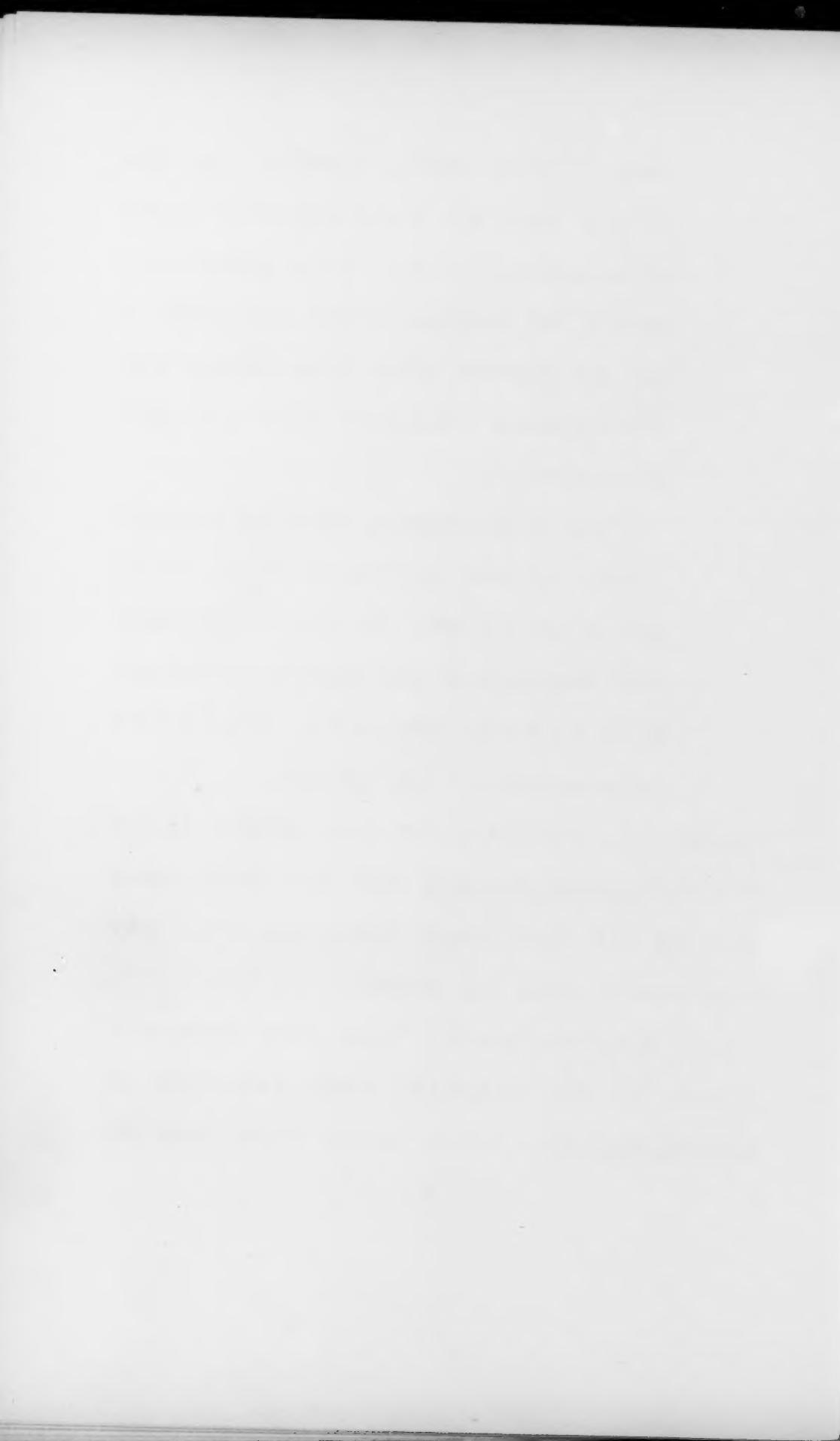


debt.' (Civ. Code, §3287.) As the local entity respondents make abundantly clear, the practical effect of Section 16280 and 16280.5 was to prevent them from paying the increases called for in the contracts, ...

"Let a peremptory Writ of Mandate issue directing respondent local entities to pay to their officers and employees the salary increases provided in the 1978-79 agreements..." Id. at 321.

Therefore, contrary to the assertion of STATE, Sonoma County did not hold as a matter of law that interest was not recoverable from the STATE.

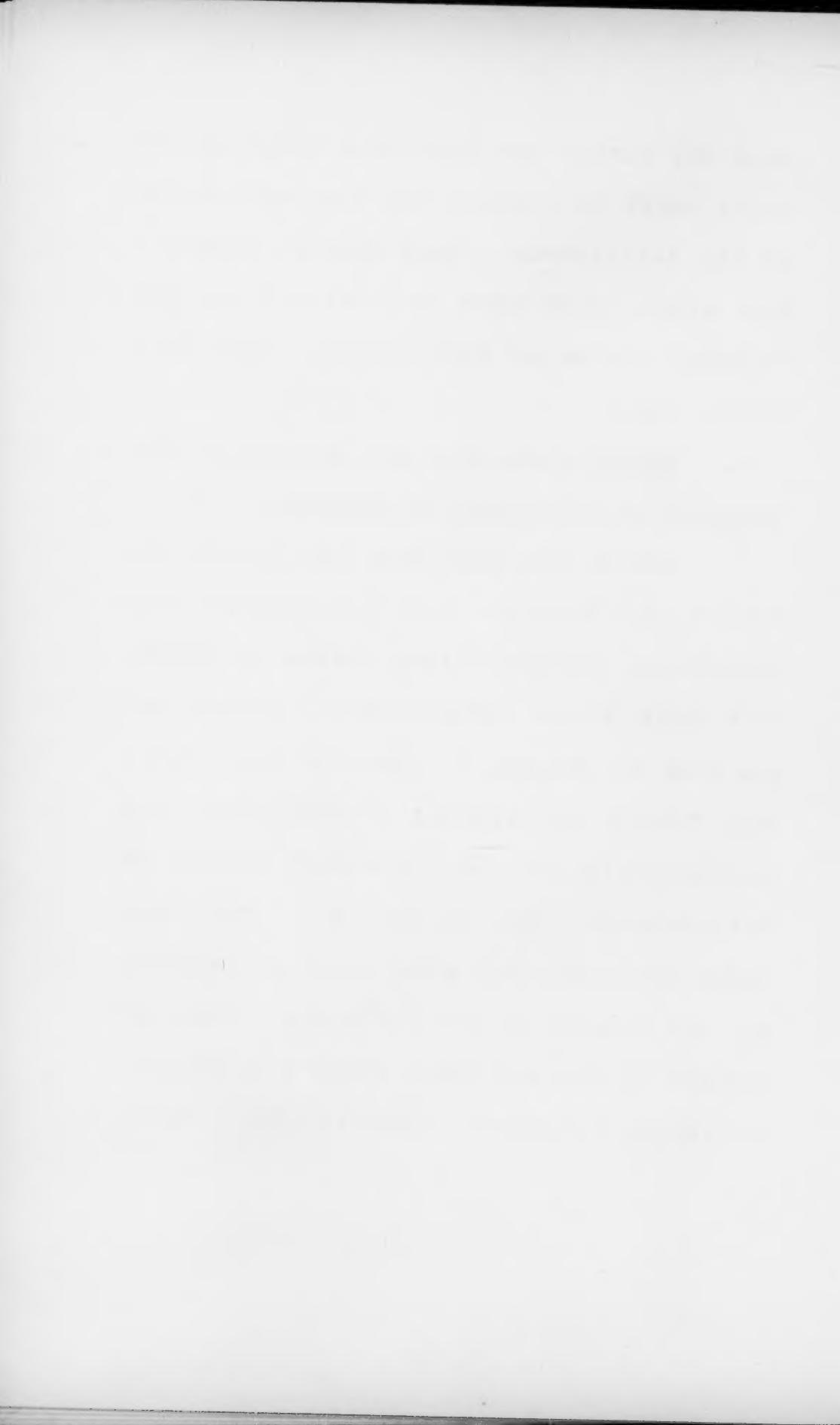
Furthermore, had the STATE's liability for interest been resolved in Sonoma County, there would have been no



need for either the Appellate Court or the trial court to resolve the "taking" claims of the Petitioners. Both Courts, however, did solve this case exclusively on the "taking" claims of Petitioners. (See Pet. 14-17, 12a.)

2. Petitioners are not Barred by the Doctrine of Collateral of Estoppel.

STATE concedes that the California Court of Appeal did not reach the collateral estoppel issue raised by STATE, and that these Petitioners "[w]ere not parties to Sonoma." (Br. in Opp. 8,9.) The Court of Appeal's decision was exclusively on the "taking" claims of Petitioners. (Br. in Opp. 9.) The trial judge (Pollack, J.) also ruled exclusively on the basis of Petitioners' "taking" claims; it did not reach STATE's collateral estoppel argument. (App.14-15). Thus,



whether the Petitioners are barred by the doctrine of collateral estoppel is not properly before this Court.¹

Further, had either the trial court or the appellate court believed Petitioners were barred from bringing an inverse condemnation action as a result of the doctrine of collateral estoppel, the lower courts would have so held. They would not have decided this case exclusively on the constitutional "taking" claims of Petitioners. California courts follow the recognized principle of jurisprudence in deciding cases, if possible, without resolving the constitutional questions raised. People v. Williams (1976) 16

¹ Petitioners contend that they are not barred by the doctrine of collateral estoppel. Petitioners were neither parties nor in privity with the parties in the Sonoma County litigation.



Cal.3d 663, 667; Johnson v. Alexis (1983)
143 Cal.App. 3d 82, 84-85.

3. The Factual Situation of this Case Does Not Justify Denial of the Writ.

The facts in this matter are not complicated. STATE took Petitioners' contractual rights to receive salary increases by the adoption of Government Code §§16280 and 16280.5.

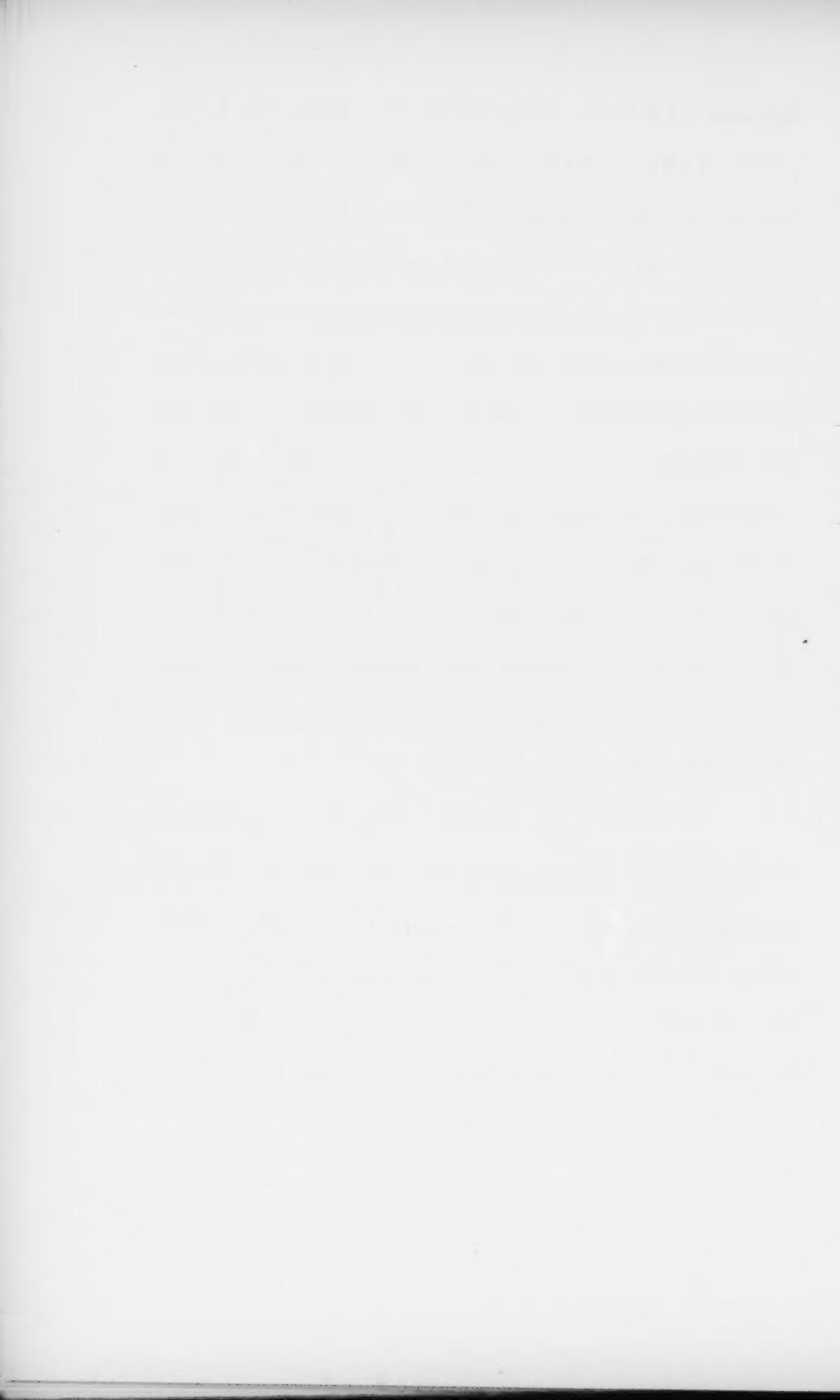
Petitioners concede there is no case precisely on point. However, the application of analogous cases decided by this Court amply support the granting of the Writ.

This Court has consistently recognized contractual rights as being property protected by the taking clause of the Fifth Amendment. (Pet. 27-30). As discussed in the Petition (Pet. 31-34), Liggett & Myers Tobacco Company v. United



States 274 U.S. 215, 47 S.Ct. 581, 71 L.Ed. 1006 (1927) also involved an action in inverse condemnation to recover only interest on the value of property which had been taken. In Liggett & Myers, the United States agreed to pay for the value of Tobacco products "taken" pursuant to an act of Congress; however, the Government refused to pay an additional sum for interest which the Tobacco Company sought as just compensation. The Court held the Company's property was taken, and it was entitled to the interest it claimed as just compensation. Id. at 220.

Finally, this Court's recent decision in First English Church v. County of Los Angeles ____ U.S. ___, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987) is discussed in the Petition (Pet. 34-39). First English establishes that Petitioners, or those



similarly situated, are not limited exclusively to a mandamus action to set aside Government Code §§16280 and 16280.5.

It should be noted that STATE's declaration of a fiscal emergency justifying the adoption of Government Code §§16280 and 16280.5 was a report prepared by the legislative analist. The Court in Sonoma County specifically held that the burden of establishing such a fiscal emergency was not met. The Court in Sonoma County concluded that: "Thus, the asserted 'fiscal emergency' relied upon by respondents as justification for the salary limitation was largely alleviated by the very same bill which contains the limitation." Id. at 311.

4. All Issues Presented in the Petition are Ripe for Review.

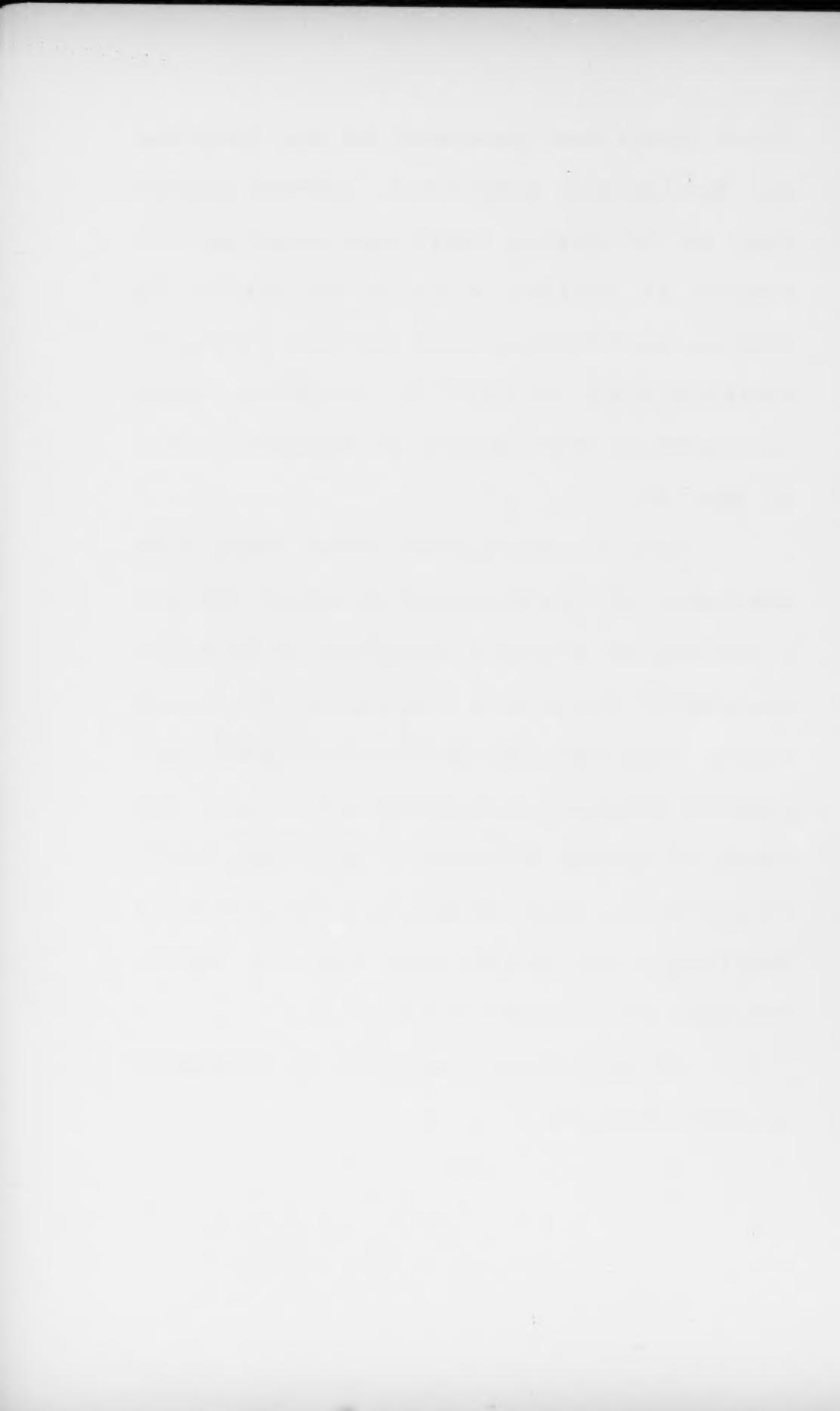
STATE argues that the second and



third questions presented in the Petition for Review are premature. STATE argues that no California Court has ruled on the issues of whether a cause of action in inverse condemnation lies for the taking of contractual rights to receive wage increases or the measure of damages. (Br. in Opp. 15).

The trial court held that the enactment of the statutes at issue was not a taking of private property within the meaning of the taking clauses of the United States and California Constitutions, and granted judgment in respondents favor. The Court of Appeal affirmed. (Pet. 8a, 13a). Therefore, the STATE's assertion is incorrect; all issues presented for review are ripe for consideration.

5. An Important Question is Presented in this Petition.



STATE argues the issues presented in this Petition resulted from a "little oddity" unlikely of repetition. (Br. in Opp. 14-20.) Petitioner's are not as sanguine that future attempts to "take" contracted for salary increases will not occur in California, other states, or as a result of congressional action.

Considerable commentary exists on the fiscal problems facing public entities throughout the nation, and the concomitant efforts to limit taxes, expenditures, and revenues of public entities. See, e.g., Befort, Public Sector Bargaining: Fiscal Crisis and Unilateral Change, 69 Minn. L. Rev. 1221, (1985); Griffith, The Federal Guarantee of Municipal Debt: Will Federalism Survive, 19 The Urban Lawyer 583 (1987); Moore, Undoing the Second American Revolution: Moore, An English View of Tax,

Expenditure and Revenue Limitations in the United States and the United Kingdom, 19 The Urban Lawyer 105 (1987); Allshouse, The Role of the Appropriations Process in Public Sector Bargaining, 17 The Urban Lawyer 165 (1985).

Employee wages and benefits comprise more than sixty percent of the budgets of most public sector employers. Befort, supra, at 1223 n. 6. Befort argues:

"The adoption of taxpayer-initiated referenda limiting property tax revenues in California (Proposition. 13) [Citation] and Massachusetts [Citation], were the best-publicized examples of a nationwide phenomenon that made it 'good politics' to oppose union demands.



[Citation]" Befort, supra,
at 1222 n. 5.

Subsequent attempts are therefore possible to limit salary increases of public employees by taking them under the guise of fiscal emergencies.

Congress has had the occasion to "bail-out" local public entities by guaranteeing a municipality's debt. See, Griffeth, supra, at 590 n. 17 & 18, which identifies the following examples: New York City Loan Guarantee Act of 1978, Pub. L. No. 95-339, 92 Stat. 460; Emergency Loan Guarantee Act (1971), 15 U.S.C. §§1841-1851; National Urban Policy and New Community Development Act of 1970, 42 U.S.C. §§4501-4527; and Rural Electrification Act of 1936, 7 U.S.C. §§901-950b.

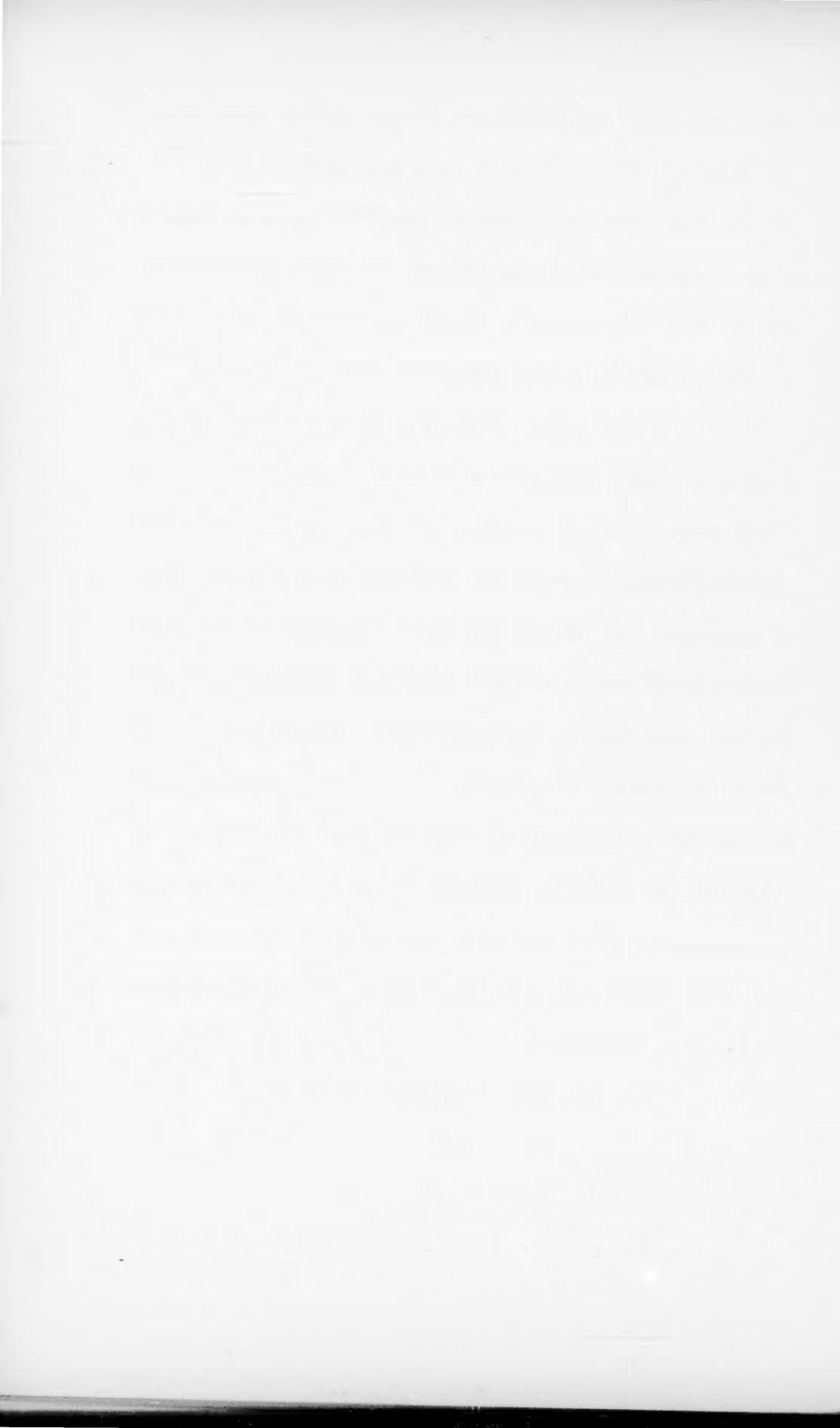
Employees of the United States Government do not negotiate their wages



through the collective bargaining process, (5 U.S.C. §7103(12) & (14)). Nevertheless, it is not inconceivable that Congress could place similar conditions on the guarantee of a municipality's debt as California did in Government Code §§16280 and 16280.5.

Given the fiscal limitations of cities, it appears more likely future "takings" will occur of public employee contractual rights to salary increases than a repeat of some of the examples of the "takings" reflected in the decisions of this Court. Moreover, whether the Petitioners herein, or those similarly situated throughout the United States, are likely to suffer future "takings" of their contracted for salary increases should not be the determining factor. As this Court has long observed:

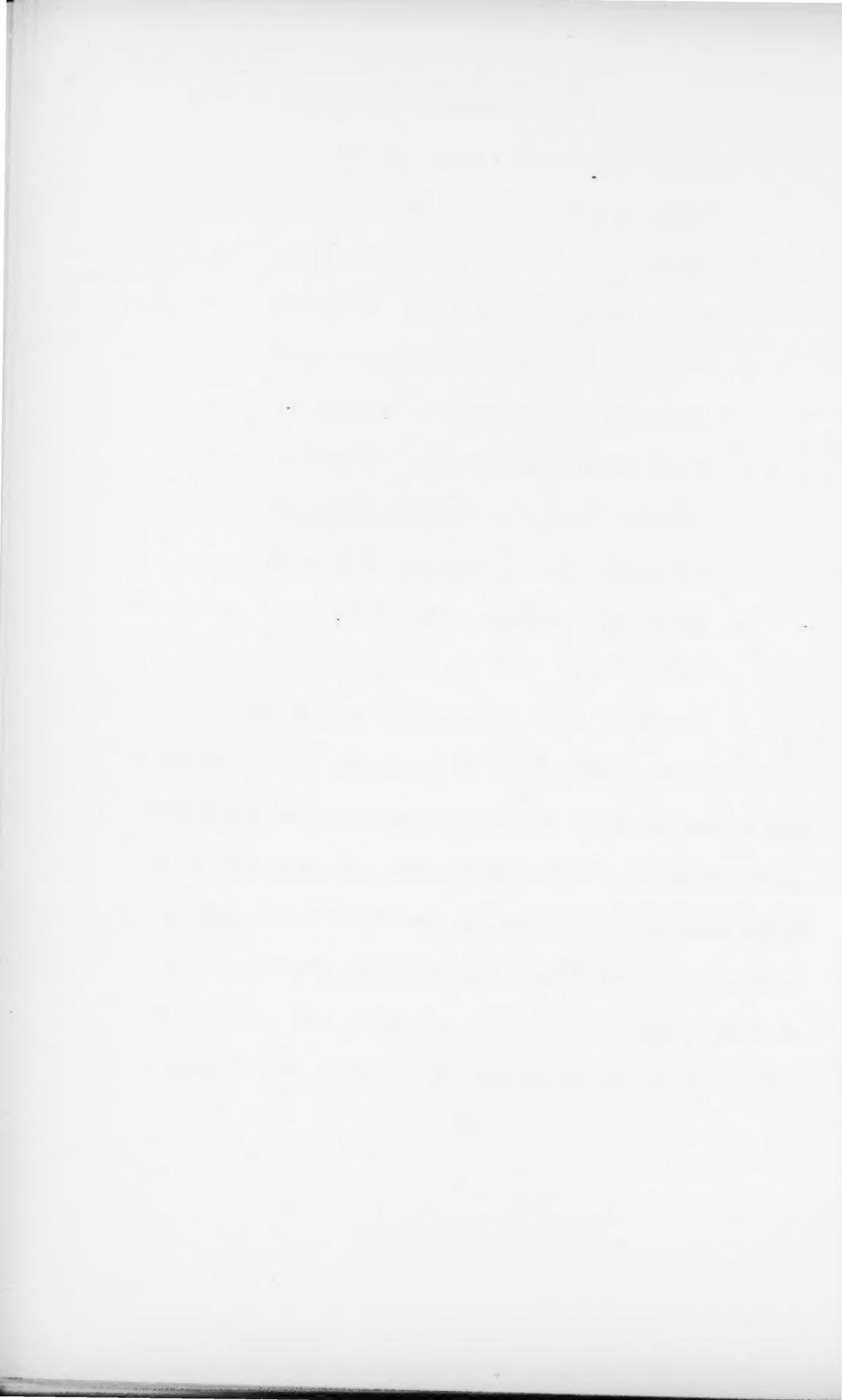
"It is axiomatic that the



Fifth Amendment's just compensation provision is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'

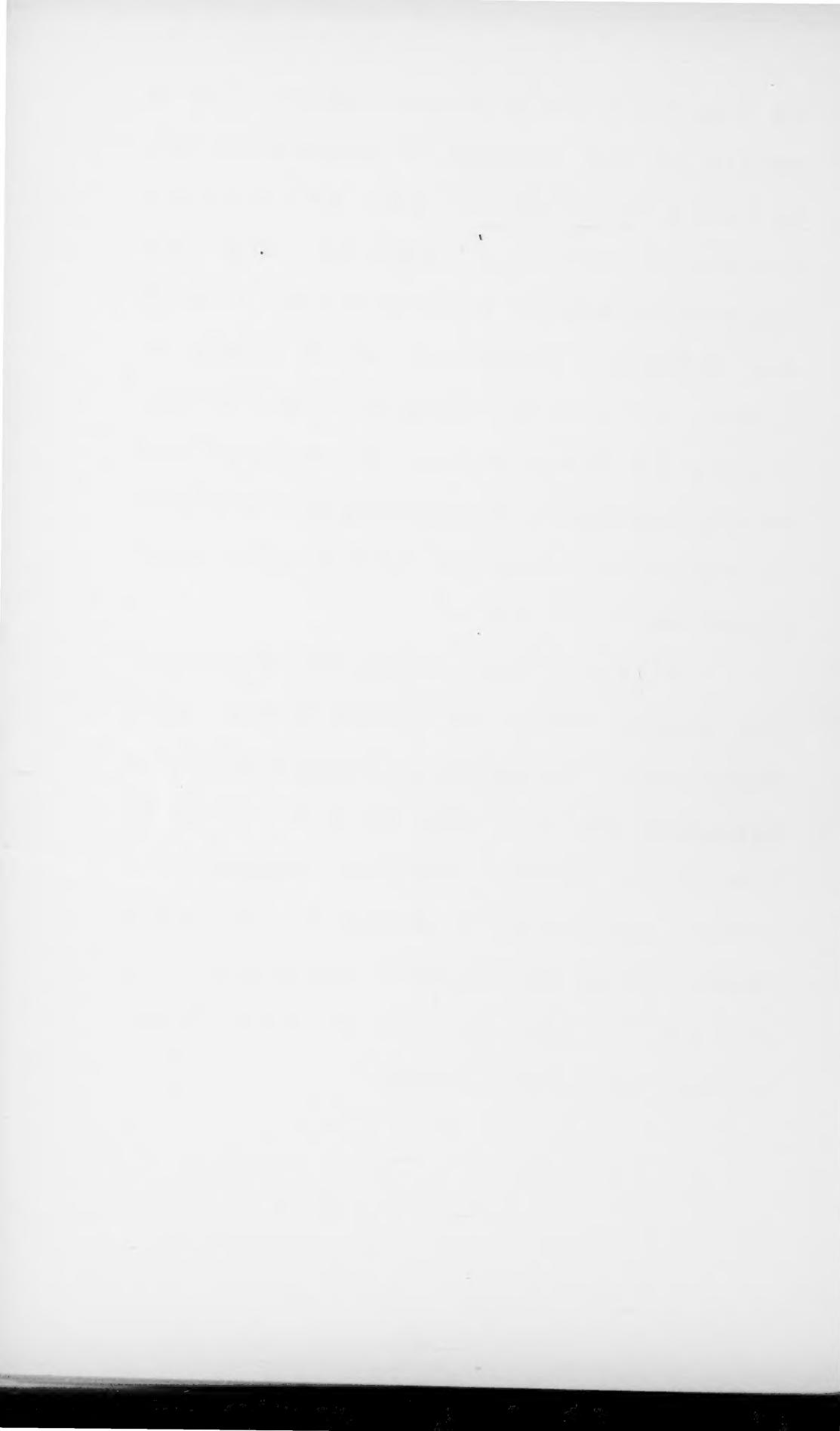
[Citation]." First English Church v. County of Los Angeles, supra, 107 S.Ct. at 2388.

Absent the issuance of a writ by this Court, Petitioners will be required to bear the burden of Government Code §§16280 and 16280.5. Proposition 13 was adopted pursuant to Articles 2, Section 8(a) and 4, Section 1 of the California Constitution which reserve to the people the power of initiative to propose and adopt amendments



to the California Constitution. As a result of the passage of Proposition 13, Article XIII A of the California Constitution was adopted, and the legislature enacted Government Code §§16280 and 16280.5. Therefore, STATE should be liable in inverse condemnation for the taking of Petitioners' contracted for salary increases, measured by the interest on the sums withheld from Petitioners' paychecks.

Finally, this Court has discussed the unique nature of public sector labor relations. In Abood v. Detroit Board of Education 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), the Court emphasized a public employer's decision in labor negotiations is "[a]bove all a political process." Id. at 228, 97 S.Ct. 1796. Further, this Court stated:



"[T]he ease of negotiating a final agreement with the Union may be severally limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others." Id.

In light of the difficult process public employees must undergo to achieve a collective bargaining agreement, Government should not be permitted to take their contracted for salary increases without paying just compensation.

CONCLUSION

For the foregoing reasons and for



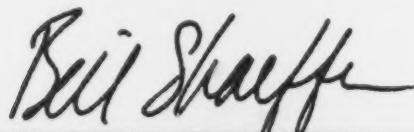
the reasons set forth in the Petition, it is respectfully submitted that the Petition should be granted.

DATED: November 23, 1987
Newport Beach, CA

Respectfully submitted,

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APPENDIX



California Constitution, Article 2, §8(a):

The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

California Constitution, Article 4, §1:

The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.